(Testimony of Nelden James Van Winkle.)

A. Chief steward.

Q. Chief steward on what ship, Mr. Van Winkle?

A. Henry White.

Q. Do you recall the first voyage of the steamship Henry White?

A. Very clearly.

Q. Very clearly. Do you remember when that boat was completed? A. Yes.

Q. When the boat was delivered ready for its first voyage? [2150]

A. April 30th.

Q. Of 1943? A. Yes.

Q. You were steward of the boat?

A. Yes, sir.

Q. When were the first supplies, food supplies placed on the Henry White?

A. May 1st or the 2nd.

Q. May 1st or 2nd, 1944? Do you recall what the condition of the chill box was?

Mr. Faulkner: We will object to that as not the best evidence; incompetent, irrelevant and immaterial.

The Court: If he knows he may answer.

Mr. Faulkner: Exception. It calls for his opinion and conclusion.

The Witness: The chill box was empty.

Mr. Pratt: Q. Yes. What was its condition as to refrigeration and cleanliness?

A. Well, we cleaned it out before we stored any stores in it.

(Testimony of Nelden James Van Winkle.)

Q. It was established to what temperature, do you remember, approximately?

A. At about 58.

Q. 58? — A. Degrees, yes.

Q. Do you recall the loading on this boat of a quantity of eggs when the stores were first placed aboard? A. Yes.

Q. Where were those eggs placed?

A. In the chill box.

Q. Do you recall about that time some FBI agents coming aboard the boat?

A. Yes, sir.

Q. Where were these eggs at the time they came aboard? [2151]

A. In the chill box.

Q. In the chill box. Can you identify these men, these FBI agents?

A. Mr. Magee.

Q. Mr. Magee?

A. I am reasonably sure.

Q. How about Mr. Johnson?

A. The other gentleman there ahead of Mr. Magee.

Q. Mr. Johnson, would you stand up, please? Do you recollect that gentleman standing up?

A. He was one of them, yes.

Q. At that time you saw the eggs were in the chill box? A. Yes.

Q. How long had they been in the chill box when they came aboard?

A. A few hours.

(Testimony of Nelden James Van Winkle.)

Q. Do you recall what date that was?

A. Well, I am not definitely certain whether it was May 1st or May 2nd.

Q. After the boat proceeded on its voyage, did you have occasion to examine any of these eggs?

A. The size of them was called to my attention by the chief cook.

Q. When was that?

A. Sometime after we had been to sea.

Q. When did you put to sea with that boat, do you recall?

A. I think it was about the middle of May.

Q. After you put to sea you say your attention was called to these eggs by the cook?

A. The chief cook.

Q. What, if any, examination did you make of the eggs?

A. Prior to that time? [2152]

Q. Prior or at that time; at any time.

A. After they were called to my attention I opened several crates.

Q. What did you observe?

Mr. Faulkner: We object to that as incompetent, irrelevant, and immaterial. This is after the FBI investigation, weeks later, after they had examined the eggs on the pier and permitted the eggs to go to sea, if your Honor please.

Mr. Pratt: The testimony of this witness, as it appears, I think, will not be objectionable, your Honor, because it relates entirely to the size of the eggs.

(Testimony of Nelden James Van Winkle.)

Mr. Faulkner: It is still objectionable in regard to the condition of the eggs, your Honor. The eggs were delivered to this ship——

The Court: He may answer.

Mr. Faulkner: Exception.

The Court: If any examination had been made at that time—what time was this?

A. After we put to sea.

Q. Fix the time as near as you can.

A. Well, I would say approximately the middle of May.

Q. The middle of May?

A. Or shortly thereafter.

Q. What did you do, if anything, in relation to these eggs?

Mr. Faulkner: The same objection, your Honor.

The Court: Overruled.

Mr. Faulkner: Exception.

The Court: Answer.

The Witness: A. Well, I was interested to see how many [2153] more eggs were the same size.

Mr. Pratt: Q. What did you observe in regard to the size of the eggs?

A. They were very small.

Q. When you say "very small," can you elaborate on that? What do you mean by "very small"?

A. Well, in the vernacular of the stewards, or the stewards department men, we called them "Peewee" eggs.

(Testimony of Nelden James Van Winkle.)

Q. How many cases of eggs did you first examine?

A. You mean——

Q. The first examination of eggs was in the kitchen, was it?

A. The size of them was called, shown to me there.

Q. They were shown to you there in——

A. The galley.

Q. In the galley? A. Yes.

Q. What did you observe as to those eggs in the galley?

A. They were small.

Q. When you examined these several cases of eggs where did you examine those?

A. In the passageway just outside the chill box.

Q. How many cases did you say you opened?

A. Approximately half a dozen.

Q. What did you observe in regard to these cases of eggs when you opened them in that way?

A. The first two or three rows on top of every case were of a fairly good size, and after that they were getting down to these Pee-wee eggs.

Q. What proportion of the eggs in each of these cases did you [2154] find of this size you denominate as "Pee-wee"?

A. All those other than the first two or three on top.

Q. They were all Pee-wees except the top couple of layers? A. Yes.

(Testimony of Nelden James Van Winkle.)

Q. Was that true as to each of these crates that you opened? A. Yes.

Mr. Pratt: Cross-examine.

Cross-Examination

Mr. Faulkner: Q. Mr. Van Winkle, do you remember the delivery of eggs to the Henry White in May of 1944?

A. You mean delivery on the dock?

Q. Yes.

A. No. They were received by a checker.

Q. When did you first see those eggs on that ship, Mr. Van Winkle?

A. The day the ship was stowed.

Q. Do you remember that day?

A. Just the exact date?

Q. Yes.

A. The first day was either May 1st or 2nd.

Q. How do you fix the date?

A. Well, we left the shipyard on Sunday, the 30th, April 30th.

Q. Sunday what?

A. April 30th, Sunday, and came down to the Howard Terminal on the following day, which, naturally, would be Monday, and I don't recall whether it was Monday or Tuesday that stores came aboard the ship.

Q. Did they all come at one time, or do you remember?

A. They were held on the dock until they were all collected and then they came aboard ship. [2155]

(Testimony of Nelden James Van Winkle.)

Q. Do you remember an incident when Mr. Johnson and Mr. Magee came on board that boat?

A. Yes.

Q. Did Colonel Hand, the colonel, there, come on board?

A. I couldn't say for certain as to that.

Q. What did you see Mr. Johnson or Mr. Magee do with the eggs when they came on board?

A. They asked me to remove some of the eggs from the chill box and transfer them over to the linen room, which I did.

Q. Transferred them over where?

A. To the linen room, a dark room, where they could be, I presume, handled.

Q. How many cases did you take?

A. I would say there must have been fifteen, I think.

Q. About fifteen cases. How many cases were in the chill box at the time, cases of eggs?

A. About fifty, I think.

Q. Is that your recollection from counting them, or did someone tell you there were fifty cases involved in this transaction?

A. No; normally we stowed fifty case of eggs aboard ship.

Q. Did you have occasion to count the number of cases?

A. Yes, I believe I did.

Q. What?

A. At the time they came aboard the ship, yes.

Q. You did count them?

(Testimony of Nelden James Van Winkle.)

A. I believe it was fifty.

Q. How were the eggs packed, were they packed in fiber cases or wooden cases?

A. I think it was both.

Q. Pardon me?

A. I think it was some of both. [2156]

Q. Some of both. Did they have any marks of the Department of Agriculture or of the Veterinary Corps on any of the cases, did you notice that?

A. I believe they were all stamped.

Q. You believed they were all stamped?

A. Yes.

Q. Did you observe the stamp?

A. As to color, do you mean?

Q. No. The Department of Agriculture stamp.

A. Yes.

Q. Who requested you to bring eggs up to this linen room; Mr. Mackey or Mr. Johnson?

A. Mr. Johnson and Mr. Magee.

Q. What?

A. Mr. Magee and Mr. Johnson.

Q. Were you present at the time of the candling of any of these eggs?

A. No, I don't think I was. I just had them moved over there.

Q. Mr. Van Winkle, did you see any of the eggs at any time that the Department of Justice men were on board after the cases had been opened?

A. I don't think so, no.

Q. After they had completed whatever they did

(Testimony of Nelden James Van Winkle.)

on that ship were the cases nailed up and returned to the chill box? A. Yes.

Q. At the time they were returned to the chill box on that ship these two men at least had examined, or had the opportunity of examining the eggs, is that correct? A. Yes.

Q. Then later the ship went to sea?

A. Yes.

Q. Is that right? A. Yes.

Q. Do you recall what type of eggs had been purchased for that voyage? Were they large eggs that had been purchased?

A. I think they were termed Large AA. [2157]

Q. Large AA? A. Yes.

Q. When you observed these eggs they were apparent to you they were not large eggs, is that right?

A. At a later date, yes.

Q. What?

A. At a later date.

Q. That was some fifteen days later?

A. Approximately.

Q. Is that correct? A. Yes.

Q. And you are satisfied that they were not large eggs? A. Yes.

Q. Is that correct? A. Yes.

Mr. Faulkner: I think that is all.

The Court: Step down.

Mr. Pratt: That is all.

Mr. Pratt: If the Court please, at this time the Government offers in evidence Exhibit No. 10 for Identification, which is a certified copy of a general

(Testimony of J. C. Strittmatter.)

agency contract between the Government through the War Shipping Administration, and the Olympic Steamship Line, together with a certified copy of letters of allocation to the Olympic Steamship Company for management of the steamships Edmund G. Ross and Heber M. Creel. These are offered in evidence. They are contracts identical with others that have been offered in evidence. This is offered in connection with the first count of the indictment.

Mr. Faulkner: We make the general objection, your Honor, that has been indicated to the court in respect to the admissibility of the other documents of this type. [2158]

The Court: Objection will be overruled. Let them be admitted and marked.

Mr. Faulkner: Exception.

(The document formerly marked U. S. Exhibit 10 for Identification was admitted in evidence.)

Mr. Pratt: Mr. Strittmatter.

J. C. STRITTMATTER,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. J. C. Strittmatter.

Direct Examination

Mr. Pratt: Q. Mr. Strittmatter, you are an officer of the Olympic Steamship Company, are you not? A. That's right.

(Testimony of J. C. Strittmatter.)

Q. What position do you occupy?

A. Executive vice president.

Q. Your headquarters and office are in San Francisco, are they not?

A. Yes, here in San Francisco.

Q. You are familiar, are you not, with the general agency contract which your company has from the Government for the management of certain vessels? A. That's right.

Q. Do you recall whether that includes the steamships Edmund G. Ross and Heber M. Creel?

A. That's right.

Q. I direct your attention to a paper, copy of a purchase order dated May 3, 1944, United States of America, War Shipping Administration care of Olympic Steamship Company, to Nye & Nissen, for the purchase of certain butter, eggs and cheese [2159] for delivery to the steamship Edmund G. Ross, and I will ask you if you can identify this document.

A. Yes, that is ours.

Q. This paper comes from the regular records of your corporation? A. Yes.

Q. Kept in the ordinary course of business, is that correct? A. That is right.

Mr. Pratt: This is offered in evidence, this purchase order.

Mr. Faulkner: May I see that one, please? The same objection, your Honor.

The Court: Objection overruled; it will be admitted and marked.

(Testimony of J. C. Strittmatter.)

Mr. Faulkner: Exception.

(The document was marked U. S. Exhibit 160 in evidence.)

Mr. Pratt: Q. I now direct your attention to a paper, an invoice of Nye & Nissen, directed to the United States of America, War Shipping Administration, Olympic Steamship Company, for certain products, eggs, butter and cheese, in the amount of $1114.92. I will ask if that comes from the records of your company.

A. Yes, it does.

Q. This invoice was paid by your company, was it not, by its check which I am showing you, cancelled check of your company, Special Account, dated June 22, 1944, for $1114.92, payable to Nye & Nissen, and showing by its perforation that it has [2160] been paid, also endorsed by Nye & Nissen; did that come from the records of your company? A. Correct.

Q. And that check paid this invoice, did it not?

A. That's right.

Q. Out of what funds was that check paid?

Mr. Faulkner: We object to that as calling for a conclusion and opinion of the witness and the same general objection, your Honor.

The Witness: We furnished the funds and we are reimbursed by the United States of America, War Shipping Administration.

The Court: If he knows he may answer. Note the objection.

Mr. Faulkner: Exception.

(Testimony of J. C. Strittmatter.)

Mr. Pratt: Q. These are offered in evidence, these two documents, the invoice as one exhibit and the check as another.

Mr. Faulkner: The general objection, your Honor.

The Court: Overruled. They will be admitted and marked.

Mr. Faulkner: Exception.

(The invoice was marked U. S. Exhibit 161 in evidence; the check was marked U. S. Exhibit 162 in evidence.)

Mr. Pratt: I now direct your attention to another document, a purchase order, dated May 10, 1944, United States of America, War Shipping Administration, Olympic Steamship Company, General Agents, directed to Nye & Nissen, attention Mr. Berman, for the purchase of certain eggs, butter and cheese for delivery to the steamship Heber M. Creel, Voyage No. 2; [2161] that comes from the regular records of your company, does it not, Mr. Strittmatter?

A. That's right.

Mr. Pratt: This is offered in evidence.

Mr. Faulkner: Same general objection, your Honor.

The Court: Admitted and marked. Overruled.

(The document was marked U. S. Exhibit 163 in evidence.)

Mr. Pratt: Q. I now show you the invoice of Nye & Nissen dated May 12, 1944, for certain eggs,

(Testimony of J. C. Strittmatter.)

butter and cheese in the amount of $1325.82, in connection with a delivery to the steamship Heber M. Creel. Do these come from the regular records of your corporation, kept in the ordinary course of business? A. Yes.

Mr. Pratt: This is offered in evidence, the invoice.

Mr. Faulkner: Same general objection, your Honor.

The Court: Same ruling.

(The document was marked U. S. Exhibit 164 in evidence.)

Mr. Pratt: Q. I now hand you a cancelled check dated May 23, 1944, of your corporation, as general agent, Special Account, payable to Nye & Nissen, for $1325.82, and I will ask you if this check was given in payment of the invoice which you have just identified. A. Yes, sir.

Mr. Pratt: The check is offered in evidence.

Mr. Faulkner: Same general objection, your Honor.

The Court: Objection overruled. Let it be admitted and marked.

(The document was marked U. S. Exhibit 165 in evidence.) [2162]

Mr. Pratt: Out of what funds was that check paid?

Mr. Faulkner: Same objection; it calls for the opinion and conclusion of the witness.

The Court: Overruled.

(Testimony of J. C. Strittmatter.)

Mr. Faulkner: Exception.

The Witness: From our funds, recoverable from the United States Government.

Mr. Pratt: Q. As I understand it, the payee of these checks were paid out of corporate funds?

A. That's right.

Q. And that your company was reimbursed by the War Shipping Administration?

A. That's right.

Q. Did your corporation have a revolving fund which was supplied to it from the War Shipping Administration? A. Yes.

Q. What was the amount of that fund at the outset of your activities?

A. It fluctuated anywhere from $100,000 to $200,000.

Q. Is there a balance in that fund at all times?

A. It is replenished from time to time as we render statements of the paid invoices.

Q. Is there always a balance in it?

A. Yes, always a balance.

Q. These two checks, I observe, are drawn upon the Special Account of Olympic Steamship Company. What is that special account, do you know?

A. Well, I wouldn't want to make a statement; I am not much of a bookkeeper. [2163]

Q. Your statement was that these checks were paid out of corporate funds.

A. That's right.

Q. And that then later you were reimbursed.

A. That's right.

(Testimony of J. C. Strittmatter.)

Q. Well, I understood you then would be paid, that revolving fund, from the War Shipping Administration, in which there was always a balance?

A. Well, I may explain to you that the revolving fund operated in this way: As we carried invoices which would be paid, we will say $50,000 of them, we would submit an invoice to the War Shipping Administration, and they reimbursed us whole; in other words, not on the individual items, but in one lump sum.

Q. Your corporation is reimbursed by the War Shipping Administration for the expenditures made in connection with the management of these boats?

A. That's right. [2164]

Cross Examination

Mr. Faulkner: Q. Mr. Strittmatter, in connection with the payment of these invoices, the relation that the Olympic Steamship Company had with the War Shipping Administration was the subject matter of a contract between them, was it not?

A. That is right.

Q. And in executing that contract ships were furnished, invoices were received and paid, and from time to time you would render a full accounting to the War Shipping Administration; they would audit the accounts and pay the money, isn't that right? A. That is right.

Q. And that was the method in existence in May 1944? A. That is right.

Q. In the early part of your examination I did

(Testimony of J. C. Strittmatter.)

not hear whether you had issued these two purchase orders or not. Had your ordered those goods?

A. Yes, they were ordered because of the fact——

Q. No, did you order them? Did you place the order?

A. Do you mean personally?

Q. Yes? A. No.

Q. They are records in the files of you company?

A. That is right.

Q. Your position was what?

A. Executive vice president.

Q. And you would have people in some other department who would [2165] handle this?

A. That is right.

Q. You produced these document for the Government, did you?

A. I assume so.

Q. I mean did you bring them into court?

A. Not personally.

Mr. Faulkner: Have you got the Department of Agriculture certificates for the Heber M. Creel and the Edmund Ross?

Mr. Pratt: In response to the request the Government is supplying Mr. Faulkner with copies of the egg grading certificates secured from the Department of Agriculture files. These are not originals, but are carbon copies.

Mr. Faulkner: In these instances, your Honor, where similar certificates have been produced at my request and all marked for identification, may it

(Testimony of J. C. Strittmatter.)

be understood with you that subject to any correction by either party the copies may be deemed the equivalent of the originals?

Mr. Pratt: Certainly. Certainly.

Mr. Faulkner: In other words, we on the defense would have to subpoena all the shipping companies to go through their files again, and if there is any error of any kind either side may correct it.

Mr. Pratt: That is right. The Government assumes that those are copies. They apppear to be carbon copies of the originals, and I have no doubt that they are accurate copies of the certificates that were actually signed by the inspecting officers. [2166]

Mr. Faulkner: I ask that the one, your Honor, which I will distinguish by the date May 5, be marked Defendants' Exhibit next in order for identification. It relates to the rot.

The Court: It may be admitted and marked for identification.

(The document was thereupon marked Defendants' Exhibit AV for Identification.)

Mr. Faulkner: And one dated May 13, relating to the Creel, I ask that that be marked for identification next in order.

The Court: It may be admitted and marked.

(The document was thereupon marked Defendants' Exhibit AW, for Identification.)

Mr. Faulkner: Q. Mr. Pratt asked you in relation to these two invoices—there is a lot of writing

(Testimony of J. C. Strittmatter.)

on these invoices that appear to be stamps put on there in the regular course of business of your company, am I correct in that, Mr. Strittmatter?

A. That is right. On this particular item here Harold Jackson is our purchasing agent.

Q. And is Mr. Jackson the gentleman who signed the certificate, "I certify that the services above specified have been performed or that the articles in quantity and quality above specified have been delivered to the vessel in good condition, Harold Jackson, Agent."? Is he an employee of your company? [2167]

A. He has been. Not at present.

Q. He was at that time?

A. That is right.

Q. Then the okeh of prices in the lower lefthand corner, that is Mr. Jackson, again?

A. That is right.

Q. Then did you have another man who had something to do with it: "Approved for payment—" I can't read that name.

A. I can't recognize it myself. I assume it is one of our employees.

Q. What is his title?

A. Just what particular item do you say?

The Court: The one that speaks of payment there.

The Witness: He was our port steward with headquarters in Seattle, Washington.

Mr. Faulkner: Q. I notice on the reverse side of Exhibit 164 there is a certificate again signed

(Testimony of J. C. Strittmatter.)

by Mr. Jackson similar to the one I read, and again the prices have been okehed by Mr. Jackson and this man Allackson, who appears on this exhibit as having signed that.

A. That is right.

Q. At any time did you receive any request or direction not to pay these invoices by any Government agency or any officer of the Government?

A. No.

Mr. Faulkner: I think that is all. [2168]

WILLIAM J. COCHRANE,

called on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. W. J. Cochrane.

Direct Examination

Mr. Hippeli: Q. Mr. Cochrane, do you live in San Francisco now? A. Yes sir.

Q. Were you formerly steward on the SS Gilbert Hitchcock? A. Yes sir.

Q. When did you sign on that vessel?

A. April 30, 1944.

Q. When did you join her?

A. Oh, about ten or twelve days previously.

Q. Where was she then?

A. In the Richmond Shipyards.

Q. Was she a new ship?

A. Brand new ship.

(Testimony of William J. Cochrane.)

Q. As steward did you have charge of the supervision and the procuring and maintenance of food supplies on that vessel? A. Yes sir.

Q. Were there any eggs or cheese on board that vessel when you first joined her?

A. No supplies of any kind.

Q. Were eggs and cheese delivered to the ship?

A. Yes.

Q. When?

A. Several days prior to sailing, around the first of May, I should judge.

Q. Where was the ship at?

A. The ship was in San Francisco pier.

Q. Where did you first observe the lot of stores, including eggs [2169] and cheese?

A. When they were on the pier.

Q. Do you recall how many cases of eggs?

A. Well, there were fifty-five on the original order.

Q. How much cheese?

A. Cheese—well, as a rule altogether there is possibly two—I should say about three hundred pounds of cheese approximately of different types.

Q. What was done with the eggs and cheese on this occasion? A. Put in the respective boxes.

Q. What do you mean? What are the respective boxes?

A. Well, they have what we call one box where we put butter and eggs—butter and cheese, rather, and then we put the eggs in the chill box.

(Testimony of William J. Cochrane.)

Q. Did you observe the label appearing upon any of the cases of eggs at that time?

A. That is it there, the green one.

Q. It was similar to the label I show you here, being U. S. Exhibit No. 43 for Identification?

A. Right.

Q. Have you ever seen Agent Dallas Johnson?

A. I believe he came on board when we were tied up at the pier.

Q. Was anyone with him?

A. Another gentleman.

Q. When was this with respect to when the eggs and cheese were loaded on the ship?

A. I didn't understand the question, sir.

Q. When did you see Agent Johnson and the other gentleman with respect to the time that the eggs and the cheese were loaded on the Gilbert Hitchcock?

A. After they were put away in [2170] the boxes.

Q. Was it the same day? A. Yes sir.

Q. What was done then?

A. He asked me to show him the ice boxes after identifying himself. I did so, and he said, "Are these the eggs that came aboard?"

I said, "Yes sir."

He said, "Have you a room to candle them in?"

I said "Yes." So I assigned two men to take the eggs out and gave him a small room on the other side of the ship to candle them in.

(Testimony of William J. Cochrane.)

Q. Did you observe the cases of eggs that he candled?

A. Yes sir, I observed the cases of eggs he candled. I was there when he took them on the other side.

Q. How many cases were there?

A. Oh, there was approximately ten or 12 cases of eggs there.

Q. Did you observe the condition of those cases?

A. The outside of the egg cases were dirty. The inside of the cases containing the eggs were dirty also, and they contained what we call a pullet egg.

Q. Did each of the ten or more cases that you saw at that time contain pullet eggs?

A. All the cases that he opened that I saw contained these small soiled pullet eggs.

Q. Did you also indicate to the agent and the gentleman who was accompanying him the cheese that was loaded aboard?

A. Will you repeat that, sir? [2171]

Q. At that time did you also indicate to Agent Johnson and the gentleman who accompanied him the cheese which was loaded on that day?

A. I showed him the butter box also where the cheese was stored.

Mr. Hippeli: That is all.

Cross Examination

Mr. Faulkner: Q. Mr. Cochrane, you were the ship steward—was that it—at the time of the voyage of the Gilbert Hitchcock in May, 1944?

A. Yes sir.

(Testimony of William J. Cochrane.)

Q. And you remember an incident relating to the loading of that vessel, is that correct?

A. Yes sir.

Q. What is your best recollection of what was loaded on that vessel in respect to ship stores?

A. Do you mean total quantity of stores——

Q. Yes. A. In money or supplies?

Q. In supplies?

A. Well, I go to sea in that type of vessel with 80 cases of eggs, 7,000 pounds of beef, 5,000 pounds of potatoes, 800 pounds of sugar, 800 pounds of turkey, and so on, etc.

Q. Is that what you had on board on this voyage?

A. Yes sir. That is a standard food stock for that type of ship for that length of voyage.

Q. Then the standard quantity would be about 80 cases of eggs, is that right?

A. That is what I want when I go to sea, yes sir. [2172]

Q. When you went to sea on that vessel did you have 80 cases of eggs? A. Yes sir.

Q. Do you know where you got them?

A. Yes sir.

Q. Where did they come from?

A. The original shipment of 55 from Nye & Nissen, and an additional shipment after that.

Q. From whom?

A. The same firm, I presume.

Q. Well, do you know?

A. The original shipment I know.

(Testimony of William J. Cochrane.)

Q. What?

A. The original shipment I know, Nye & Nissen.

Q. How about the additional shipment?

A. The additional shipment I presume the same purchasing agent would buy the same eggs from the same firm.

Q. Were they all on board that ship on the day that those agents came down? A. Yes sir.

Q. So that all told there were 80 cases of eggs in the chill room, am I right in that?

A. There were 80 cases of eggs when we went to sea.

Q. Were there 80 cases of eggs when Mr. Johnson and Mr. Magee came on board that vessel in May 1944? A. Yes sir.

Q. Did you examine the labels on all of those cases? Did you examine the labels on all of the cases?

A. The eggs are stacked in one position. The labels are visible.

Q. I mean you examined them?

A. I saw the labels on the cases.

Q. That is what I mean. And you were shown a label—I think [2173] it was called to your attention by number as Exhibit 43—you were shown a label U. S. Exhibit 43 and asked the question whether or not that was the type of label that appeared on certain cases?

A. That was the type of label.

Q. And was that the type of label that appeared on all the cases in the chill room?

(Testimony of William J. Cochrane.)

A. Yes sir.

Q. The whole 80 cases? A. Yes sir.

Q. How did you fix the date of the loading of the vessel, Mr. Cochrane?

A. Approximately forty-eight hours before sailing time, maybe one day extra. Two or three days before sailing time to get stores aboard.

Q. Did you receipt for the goods as they came aboard to Nye & Nissen?

A. Ordinarily I do or the port steward does. In this case an agent on the dock did.

Q. Someone on the dock. Now, you did not see them arrive on the dock, did you?

A. I saw them when they were delivered at the dock.

Q. You did see them? A. Yes.

Q. But you did not sign the delivery tag?

A. No.

Q. Later you saw them in the chill room and after that—the next day, was it, you saw Mr. Johnson or Mr. Magee?

A. The day that the eggs arrived on the pier.

Q. You are certain of that, are you, Mr. Cochrane? A. Yes sir.

Q. So that the date of the delivery of the eggs is the day that you saw these men, am I right?

A. Yes sir. [2174]

Q. You took them to the chill room, showed them some eggs—— A. Yes sir.

Q. Did they open them in your presence?

A. Yes sir.

(Testimony of William J. Cochrane.)

Q. Did they candle any eggs in your presence?

A. Yes sir.

Q. How many cases?

A. Oh, we probably took six or eight cases out of there, to the best of my knowledge.

Q. You used the word probably. Is that your best recollection of the number?

A. Six or eight cases.

Q. Did they have a candling device?

A. Yes.

Q. Which of the men had the candling device?

A. That gentleman there with his hand to his face, and another gentleman who was with him.

Q. You mean the gentleman at this table?

A. The second gentleman facing me here.

Mr. Faulkner: Will you stand up, Mr. Johnson?

Q. Is this the man who had the candling device?

A. He was in the room with the other gentleman with the candling device.

Q. Who was the other gentleman?

A. That I don't recall right now.

Q. So Mr. Johnson and another man——

A. Yes sir.

Q. Who did the egg candling?

A. Both of them, so far as I know.

Q. You have seen eggs candled before, have you? A. Yes sir.

Q. You hold the egg up before the candle and observe its contents through the light that is reflected out of that [2175] candle, is that right?

A. Yes sir.

(Testimony of William J. Cochrane.)

Q. Have you ever candled eggs?

A. Yes sir.

Q. And you have seen eggs candled?

A. Yes sir.

Q. And both of them were engaged in the ordinary candling of eggs which you have known and seen before, is that correct? A. Yes sir.

Q. Did they keep any records of their findings?

A. They made notations, but I know nothing about them.

Q. I mean you noticed that they did keep records?

A. I noticed that they had paper and pencils and candling equipment.

Q. What else did they do to the eggs besides candle them? A. That is all I know.

Q. Well, they took the eggs out of the box, they held them to the light, and put them back in a box, am I correct?

A. Made notations before they returned them to the container.

Q. Now then, did they do anything else except take the eggs out of the box and candle them before the light and make notations in respect to the eggs?

A. That is all so far as I can recall.

Q. That is all so far as you recall. Now, I understand you to say you observed those eggs in the candling process? A. Yes sir.

Q. And you gave some testimony relating to the size of the eggs? [2176] A. Yes sir.

(Testimony of William J. Cochrane.)

Q. What was the size?

A. They were what is commonly known as a pullet egg, what I would call a pullet egg. In other words, it is a much smaller egg than the standard egg that you use.

Q. What is the standard egg that you use?

A. Well, as regarding weight I don't know, but as for size, I should say it is three to four times the size of the pullet egg.

Q. Three or four times as large?

A. Yes sir.

Q. What did you do with those eggs of that size? Did you keep them on board?

A. Put them back in the chill room and used them during the voyage.

Q. And did you have any eggs of the larger size in any of those cases?

A. Yes sir—pardon—in those cases, did you say?

A. Not in the cases that were opened up. I had soiled pullet eggs in them. Those were all the size eggs.

Q. In other words, all the cases that these men opened up were all small eggs?

A. Were all small eggs.

Q. They candled them, made a record, and sent them back, is that right? A. Yes sir.

Q. So that of all the eggs that they examined there was not a single case of eggs opened other than eggs which you have characterized as pullet eggs, is that right?

(Testimony of William J. Cochrane.)

A. I didn't say [2177] that, sir. They opened those eggs and took other eggs in also.

Q. They what?

A. They took cases of those eggs and other cases in there also.

Q. Were there cases which contained eggs of a larger size? A. Yes sir.

Q. How many cases of those were in there?

A. I should judge two.

Q. So two out of the six cases had larger eggs and four out of the six had small ones, is that about it? A. Yes sir.

Q. Now, in the cases that had the larger eggs in were there any small eggs in those cases?

A. No sir.

Q. And in the cases that had the small eggs were there any large eggs in those cases?

A. No sir.

Q. Did you show these men the butter?

A. Yes sir.

Q. And the cheese? A. Yes sir.

Q. Did they do anything with respect to the butter? A. Not to my knowledge.

Q. Did they do anything with respect to the cheese? A. They inspected it.

Q. They inspected it? A. Yes sir.

Q. What did they do in relation to inspecting it? A. Well, they inspected it and weighed it.

Q. Did they weigh it in your presence?

A. We have scales on board, sir.

(Testimony of William J. Cochrane.)

Q. I mean were you present when they weighed it?

A. I was [2178] there during the egg candling.

Q. Were you present when they weighed the cheese?

A. I was present when I showed them the cheese in the chill—in the butter box and when they inspected it.

Q. How many packages did they take in of cheese? A. What type of cheese?

Q. Any kind?

A. Well, there was probably ten assorted packages of cheese in that room.

Q. Ten? A. Possibly.

Q. Where did they come from?

A. They came from the same firm.

Q. Was any of the cheese out of the chill box taken to a place so it could be weighed?

A. I don't recall being with the gentleman at that time other than showing him the cheese and seeing him inspect it in that box.

Q. I understood you to say that they weighed them, too?

A. They had scales there, and I presume they weighed them, yes. So far as the actual weighing and transportation of the cheese, I was called away by other duties.

Q. Was the scale and was the cheese in the chill room? A. That I don't recall definitely.

Q. Mr. Cochrane, you indicated when you were first asked the question about the number of cases

(Testimony of William J. Cochrane.)

that were taken to that room for candling that there were ten or twelve. Then when I asked you the same question you said about six. What is your best recollection of the number of cases that actually were taken up to be candled?

A. My best recollection is that they moved four or six cases—what I would call these small cases, and several of the other cases into this room. This room I have in mind wouldn't contain twelve cases of eggs, sir, where they candled them. There wouldn't be space enough in there for them. It is a small store room.

Q. Did they candle twelve cases?

A. I didn't say twelve cases, sir. I said six or eight cases of those what I call colored eggs and several cases of what I call clean eggs.

Q. How many cases altogether did these men candle out of the chill box?

A. Eight cases of eggs.

Q. Eight? A. Yes.

Q. Not ten or twelve? A. Eight.

Mr. Faulkner: That is all.

The Court: We will take a recess for a few minutes. The jurors may be excused.

(Recess.) [2180]

The Court: You may proceed.

Mr. Pratt: Call Mr. Fisher, please.

EDWARD FISHER,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. Edward Fisher.

Direct Examination

Mr. Houck: Q. Mr. Fisher, what is your employment? A. I am a registered ship clerk.

Q. Where do you work?

A. On the San Francisco waterfront.

Q. Whom are you employed by?

A. The Waterfront Employers.

Q. What are they?

A. Well, they represent the various steamship companies.

Q. Do I understand that you receive stores that are loaded on ships on the waterfront?

A. Yes.

Q. Is that your job? A. Yes, sir.

Q. Was that your job in May, 1944?

A. Yes, sir.

Q. Do you recall loading the Gilbert Hitchcock? A. Yes.

Q. About that date, about that month?

A. Yes, sir.

Q. Do you recall when it was, what particular day it was? A. May 1st.

Q. At what pier was it? A. Pier 23.

Q. Where is that? In the San Francisco harbor, here? A. Yes, sir. [2181]

(Testimony of Edward Fisher.)

Q. What company employed you at that time, on that date?

A. Well, the Olympic Steamship Company.

Q. Do you recall loading eggs on that ship on that occasion? A. Yes, sir.

Q. When did you first see these eggs that went on? A. I received them on the dock.

Q. How did they come to the dock?

A. They were hauled in there.

Q. By what? A. Truck.

Q. Do you recall what the driver looked like?

A. Well, not exactly, no, sir.

Q. At any rate, he came in with a truck with some eggs on it? A. That's right.

Q. Do you know how many cases? Let me refresh your recollection. I show you Government's Exhibit— —

Mr. Faulkner: We object to the witness' recollection being refreshed by a document mailed to the steamship company.

Mr. Houck: Q. What is this? Is that in evidence?

Mr. Faulkner: If it is not marked "Identification" it is in evidence.

Mr. Houck: Q. I show you Government's Exhibit 144 in evidence, and call your attention particularly to a pencil handwritten signature in the middle of the document. Whose signature is that?

A. That is mine, sir.

Q. Do you recall the circumstances of putting that signature [2182] on that piece of paper?

(Testimony of Edward Fisher.)

A. Yes. That is an acknowledgment that I received this.

Q. Whom did you get that paper from?

A. I got it from the driver.

Mr. Faulkner: May I have the witness' answer read, your Honor?

The Court: Yes.

(The answer was read by the reporter.)

The Witness: I got it from the truck driver.

Mr. Houck: Q. Did that accompany this truckload of eggs that you were telling us about?

A. Yes.

Q. What did you do prior to putting that signature on that piece of paper?

A. I counted the number of packages, or cases, whichever the case may be.

Q. How many cases were there?

A. There were 55 cases of eggs.

Q. Did the driver bring anything else, other than eggs?

A. Yes, he did. There were 25 cases of butter, or whatever it is here, yes, 25 boxes of butter, two cases of Cheddar cheese and 5 of processed American, one bag of grated cheese, and 4 cartons of cream cottage cheese.

Q. Let's see if I understand you. When the driver gave you that invoice, did you check the items listed there with the delivery he made on his truck? A. Yes.

Q. Your signature there means that they agreed?

A. That's right. [2183]

(Testimony of Edward Fisher.)

Q. Did you open up any of these packages?

A. No, I didn't open them.

Q. Did you make any inspection for quality?

A. No. That is not my job.

Q. Did you weigh the cases? A. No.

Q. All you did was to count the number of packages and see that they agreed?

A. That's correct.

Q. You said that you did not make any inspection. Did anybody else? A. Yes.

Q. Who did?

A. There was an agent of the FBI came on the dock and showed me his credentials and introduced himself.

Q. Was it Mr. Johnson, here?

A. Yes, that was the gentleman.

Q. Was anyone else with him? A. Yes.

Q. How many people? A. Sir?

Q. How many people? A. Two.

Q. Do you see them in this court room at any place?

A. Well, I think the gentleman there on the right.

The Court: Q. In the uniform?

A. No, not him in the uniform: the gentleman there next to the soldier. I can't see very well.

The Court: Stand up, please. Is that the gentleman you mean?

A. No, I don't think that was him there.

Mr. Houck: Q. At any rate, Mr. Johnson and two others came on this pier? A. Yes.

(Testimony of Edward Fisher.)

Q. What did you show them?

A. What did I show them?

Q. Yes.

A. I showed them the delivery from Nye [2184] & Nissen.

Q. That had been made that morning?

A. Yes, sir.

Q. Off this truck you told us about?

A. Yes, sir.

Q. And covered by that invoice?

A. Correct.

Q. Which is 144 in evidence. How long was it after the eggs were delivered and the products were delivered?

A. All I would say, the same morning, within a couple of hours.

Q. What did they do in your presence?

A. They opened the eggs and they had some scales with them, and they weighed, I believe, butter and cheese.

Mr. Faulkner: I can't hear the witness.

The Court: Read the answer.

(Record read by the reporter.)

Mr. Houck: Q. Do you recall how many cases of eggs they opened?

A. Well, I believe they opened all that were on the dock at the time. They had loaded some of them already.

Q. Have you any idea how many cases that would be that they opened?

A. Well, I should say half of them on the dock.

(Testimony of Edward Fisher.)

Q. Did you observe any of the eggs in the cases that were opened? A. Yes, I did.

Q. In how many cases? A. Sir?

Q. In how many cases?

A. Oh, I would say 4 or 5. I was busy with my duties.

Q. Can you describe the eggs that you saw in those cases to us?

A. They looked very small. [2185]

Q. They were very small eggs? A. Yes.

Q. Did you observe whether these cases bore a label? A. Yes.

Q. Can you describe that label to us?

A. The label was a hen sitting on a nest.

Q. I show you Government's Exhibit 50 for Identification. Was it similar to this label?

A. Yes.

Q. It was? A. Yes.

Q. These eggs that the agents examined, when were they put on board the ship?

A. They were put on in the course of the day; I don't recall when.

Q. Do you recall how soon it was after the inspection was made?

A. Yes, I would, too, because we were held up a little bit in our loading, because they were making that examination, and then they were put on.

Q. Did you observe anything being done to those eggs later, after they were loaded on board ship?

A. Yes.

Q. Where was that?

(Testimony of Edward Fisher.)

A. Well, it was my duty to go aboard and see that the stores were placed in the proper boxes and so forth, of course, under the supervision of the steward of the ship, and I saw them in the store room opposite the chill box.

Q. What were they doing?

A. Candling those eggs.

Q. The same persons that were inspecting them before? A. Yes, sir.

Q. By "candling," what do you mean?

A. They were holding [2186] them up to a strong light.

Q. Incidentally, where did you load these eggs, what part of the ship?

A. They went into the chill box.

Q. In the chill box of the ship? A. Yes.

Mr. Houck: That is all.

Cross Examination

Mr. Faulkner: Q. Mr. Fisher, you work for the Waterfront Employers or Employers' Association? A. Employers.

Q. You have a book there? A. Yes, sir.

Q. What does that relate to?

A. That is my time, and a record of my earnings.

Q. Will you show me the date May 1, 1944?

A. Yes. That is a record of my time and my earnings.

Q. This shows that you were working on the Gilbert Hitchcock during certain hours of that day.

A. Yes.

(Testimony of Edward Fisher.)

Q. Is that right? A. Yes.

Q. How long did you work on the Hitchcock, do you remember?

A. Yes; from eight o'clock in the morning until six—seven, I think it was, before we had finished.

Q. At all events, Mr. Fisher, when you testify to the date you refreshed your memory before you came into court from your record? A. Yes.

Q. Is that correct? A. Yes, sir.

Q. Do you recall on that day loading other stores on board the ship, the Gilbert Hitchcock?

A. No, I don't. [2187]

Q. Do you recall of loading other eggs, other than those that you refer to as having come down from the firm of Nye & Nissen?

A. No, sir, I don't.

Q. In addition to the paper that you brought, which was called to your attention by Mr. Houck, on this order of eggs was it accompanied by a delivery tag as distinguished from that paper, do you remember?

A. Well, it undoubtedly was, because they bring delivery tags in with them, and sometimes several copies.

Q. They left these with you, is that right?

A. Yes.

Q. Did you sign the delivery tag showing the receipt of the delivery of that merchandise?

A. I undoubtedly did, yes.

Q. Then you signed this paper which went to the office, is that correct? A. Correct.

(Testimony of Edward Fisher.)

Q. That is the Gilbert Hitchcock, Pier 23?

A. Yes.

Q. As I understood you, when this merchandise came down in a truck from the firm of the vender, whoever it may be, you would check that merchandise against the quantities shown in the delivery tag? A. Yes, sir.

Q. You would use the delivery tag rather than the invoice, wouldn't you, for that purpose?

A. Well, if it would be available; there were so many papers.

Q. Which did you use in this case, do you remember? A. I don't recall, sir.

Q. Well, at all events, there were some records that the truck driver, a slip of paper, either a delivery tag or something [2188] this Exhibit 144, brought and the material would be unloaded off the truck and you would then check against it; am I correct in that? A. Yes, as to quantities.

Q. Did you at any time request any agents of the FBI to come down to that pier?

A. No, sir.

Q. About how long a time elapsed after the truck arrived on the pier when the agents also arrived?

A. Well, I would say it was the same morning, and shortly after the delivery.

Q. By the agents, I mean Mr. Johnson, who is sitting here at the table——. A. Yes.

Q. Would you say within an hour?

A. I would say within a couple of hours.

(Testimony of Edward Fisher.)

Q. Had the eggs been removed from the place they had been taken off of the truck?

A. No.

Q. On the first occasion that you saw that man, Mr. Johnson, he was accompanied by another man whom you do not now recognize as being in court?

A. Yes.

Q. And certain articles on the pier were weighed, is that right? A. Yes.

Q. That was before this egg-candling process, am I correct in that? A. Yes, sir.

Q. That cargo of merchandise that had come from the firm of Nye & Nissen, presumably, they had already started to load part of it onto the ship, is that correct? A. Yes, sir.

Q. Do you recall what had been loaded at the time they came? [2189] A. No, sir, I do not.

Q. Do you know whether the butter had been put aboard? A. I do not recall.

Q. Or the cheese?

A. Well, the cheese hadn't been, because it was weighed on the dock.

Q. Did you see them weigh it?

A. Yes, sir.

Q. Did they open the cases? A. Yes.

Q. Now, then, the open case, did they weigh that, as you remember? A. I don't recall.

Q. Were they the large boxes that hold the big cheddars of cheese? A. Yes, they were.

Q. Did you observe the number of those pieces of cheese in each case? A. No.

(Testimony of Edward Fisher.)

Q. Do you know whether the box was full?

A. I don't recall.

Q. You don't recall? A. No, sir.

Q. Did you observe the weight? A. No.

Q. You had just checked the merchandise in and you receipted for it, and there were certain towns listed for them; did you compare the weights that you had receipted for and the weights that they had determined from their weighing?

A. No, sir. When we receive ship's stores we receipt only as to quantities.

Q. I know, but you got a tag showing weights.

A. Undoubtedly, yes.

Q. And you had the privilege of weighing them—— [2190]

A. We check them but we never weigh; we are not required to do that.

Q. That is something you did not do?

A. Correct.

Q. Though you had the right to do it. When these men came down you had already signed the tag showing the receipt of certain quantities of cheese, 160 pounds of one type, 150 pounds of another, 10 of another, and I think 20 of another. Did you observe whether the weight that was found on the dock compared with the receipt that you had given? A. No, sir.

Q. Did they tell you that it did or did not?

A. No, sir.

Q. They made no communication to you, at all?

A. No, sir.

(Testimony of Edward Fisher.)

Q. When they were all through with those boxes, regardless of whether they weighed an ounce or 150 pounds, they went back on board the ship?

A. Yes, sir.

Q. Is that correct? A. Yes, sir.

Q. Did they give you any instructions not to approve any of these invoices? A. No.

Q. Either in respect to eggs, butter, or cheese?

A. That is correct.

Q. What did they do in your presence in respect to butter, merely weigh it?

A. I believe they did weigh some butter, yes.

Q. Do you remember whether they made any tests, tasted it, or anything like that? A. No.

Q. There were 55 cases of eggs and some had been put on board [2191] ship and those that remained on the dock, did I understand you to say that all of those cases were opened?

A. Yes, I believe they inspected, they opened all the cases.

Q. What did they do after they opened them?

A. As I recall, they merely looked at them.

Q. I mean did they pull the eggs out of the boxes?

A. They took the lid off the crate and looked at them, took them in their hands.

Q. Did they take each egg out of the box?

A. No, sir.

Q. Did they look at them? A. Yes, sir.

Q. Did they weigh the case of eggs?

A. I don't think they did on the dock, no.

(Testimony of Edward Fisher.)

Q. Then were those cases nailed up and put in the chill room?

A. Yes, sir. They were loaded aboard the ship.

Q. Were they nailed up? A. Yes, sir.

Q. You saw some men later? A. Yes.

Q. How many hours elapsed between the time the agent, Mr. Johnson, and his companion came there and the next time you saw the agent?

A. They were aboard in the morning. I had occasion to go aboard and I saw them candling the eggs.

Q. How long after?

A. I would say very shortly after.

Q. I mean did they leave after the first inspection and the weighing of the cheese?

A. No, they remained there, and they went aboard, I think.

Q. Then they went aboard the ship and they candled some eggs? [2192] A. Yes, sir.

Q. Do you know whether the eggs that they candled at that time were the eggs that were part of the eggs that were on the pier or part of the eggs that had already gone in the chill room?

A. Well, they took them out of the chill room.

Q. Whether they were eggs that were already there or eggs that were out on the pier, you don't know? A. I wouldn't have any knowledge.

Q. Do you recall how many cases of eggs they took out of the chill room? A. No, I do not.

Q. Did you actually observe the candling?

A. Yes, sir.

(Testimony of Edward Fisher.)

Q. You were in the room? A. Yes, sir.

Q. Who else was in the room?

A. His companion, and I think the steward was there.

Q. What is your best recollection?

A. Sir?

Q. What is your best recollection? Was he there, or not? A. Yes, he was there.

Q. Did you remain there during the entire time they candled the eggs?

A. I couldn't say, because I was aboard very briefly.

Q. I mean, did you remain there?

A. No, I came ashore.

Q. You were there just a short while?

A. Yes, sir.

Q. You observed them actually candling eggs?

A. Yes, sir.

Q. Did the gentleman there candle some of the eggs? A. Yes, sir. [2193]

Q. What did Mr. Johnson do with respect to the eggs, tell me how he candled them.

A. He held them up to a strong light.

Q. Then what did he do?

A. Well, that I don't know.

Q. Did he put them back in the case?

A. Yes, he put them back.

Q. Did he make any record of what his conclusions were?

A. No, I couldn't say as to that.

Q. Do you know?

(Testimony of Edward Fisher.)

A. I simply was in that room and saw him doing that.

Q. How many cases of eggs did you see that were opened that were small, what you have called small eggs? A. I would say a half a dozen.

Q. How many cases did you see that were open were eggs that were large?

A. They opened all of them. I saw merely the few that looked very small to me. I am not an egg expert.

Q. Did you see any eggs that were larger than those that appeared small to you?

A. Oh, yes.

Q. How many cases of eggs were large?

A. I don't remember.

Q. Were the cases of large eggs more than the cases of small eggs? A. I would say.

Q. What?

A. I would say so, more large. [2194]

Q. How many men were with Mr. Johnson on this morning? A. One.

Q. During the entire time from the time of the opening of the eggs on the pier and the candling of the eggs in the stateroom or in that room on board ship there was only one Government man with Mr. Johnson, is that right?

A. Yes, sir, to my knowledge.

Q. Was he in uniform?

A. I don't recall.

Q. And did they have a scale with them?

A. Yes, sir.

(Testimony of Edward Fisher.)

Q. What kind of scale?

A. Well, it was a very small platform scale, I would say.

Q. How large would it be?

A. Oh, I would say it was about this size, the platform itself.

Q. That would be about eighteen inches?

A. Similar, something like that.

Q. The platform at all events that they had with them——

A. Sir?

Q. The platform they had with them would be as large as this folder which contains these egg labels, isn't it?

A. Yes, possibly a little larger.

Q. And how high was it?

A. I really couldn't tell, sir. It has been so long, I would have to speculate.

Q. Was that the only scale they had with them that you saw?

A. That is all that I saw, yes.

Mr. Faulkner: That is all.

Mr. Pratt: If the Court please, at this time the [2195] Government offers in evidence Exhibit No. 15 for Identification, which is a certified copy of a general agency contract between the United States through the War Shipping Administration and the South Atlantic Steamship Lines. Also included in the exhibit is a certified copy of a letter of allocation for the steamship Cape Pillar to the South Atlantic Steamship Lines for management under the general agency contract.

Mr. Faulkner: Same general objection to the admissibility, your Honor.

The Court: The objection will be overruled. Let it be admitted and marked.

Mr. Faulkner: Exception.

(U. S. Exhibit 15 for Identification was thereupon received in evidence.)

R. A. McLAREN

called on behalf of the Government; sworn.

Direct Examination

Mr. Pratt: Q. Your name is R. A. McLaren?

A. Correct.

Q. Mr. McLaren, you are an official, are you not, of Williams Dimond & Co. of this city?

A. Yes, sir.

Q. What is your position with that company?

A. Vice-president and treasurer.

Q. As vice-president and treasurer are you familiar with the [2196] activities of that company in connection with the management of ships for the War Shipping Administration?

A. I am.

Q. What are the relations of your company with South Atlantic Steamship Lines?

A. General Agents for the South Atlantic Steamship Lines.

Q. Did you have to do with the management of the steamship Cape Pilliar? A. Yes, sir.

Q. I direct your attention to a document which

(Testimony of R. A. McLaren.)

is in evidence in this case as Exhibit 56 and I will ask you if you can identify this as part of the regular records of your corporation kept in the ordinary course of business? A. I can.

Q. And this represents, or this is a purchase order issued by the War Shipping Administration by yourselves as agents for South Atlantic Steamship Lines, who in turn are general agents?

A. That is correct.

Q. Issued to Nye & Nissen for certain cheese and 45 cases of fresh selected eggs, is that right?

A. That is correct.

Q. I now direct your attention to Exhibit No. 57 and I will ask you if that is the original of an invoice submitted by Nye & Nissen to your company for the products described in the purchase order which I just showed you?

A. I would say definitely it is because the purchase order——

The Court: Pardon me. Raise your voice. The reporter must get it down.

Mr. Pratt: Q. You identify it by the purchase order [2197] number? A. That is right.

Mr. Pratt: This paper, Exhibit 57 for Identification, is offered in evidence, if the Court please.

The Court: It may be admitted and marked.

Mr. Faulkner: We have no objection other than the general objection, your Honor.

The Court: Let it be admitted and marked.

(U. S. Exhibit 57 for Identification was thereupon received in evidence.)

(Testimony of R. A. McLaren.)

Mr. Pratt: Q. I now direct your attention to a canceled check, Williams Dimond & Co., dated San Francisco, June 3, 1944, payable to Nye & Nissen, in the amount of $563.30 with the cancellation perforation, the endorsement of Nye & Nissen, and I will ask you if that comes from the regular records of your corporation? A. It does.

Q. Was that check given in payment of this invoice, Exhibit No. 57? A. It was.

Q. Mr. McLaren, out of what funds was this check paid?

Mr. Faulkner: We object to that as calling for the opinion and conclusion of the witness, your Honor.

The Court: If he knows he may answer.

Mr. Faulkner: It is not the best evidence.

The Court: Q. Do you know from what funds this check was payable?

The Witness: A. Those were paid out of funds supplied [2198] Williams Dimond by the South Atlantic Steamship Company. South Atlantic draws funds from the United States Government and passes them along to us at our request when we anticipate disbursements and payrolls for vessels arising.

Mr. Faulkner: I submit, your Honor, that that answer should go out.

The Court: Q. Do you know that of your own knowledge?

The Witness: A. Oh, yes, I know that.

The Court: He says he knows that of his own knowledge.

(Testimony of R. A. McLaren.)

Mr. Pratt: You may cross-examine. I want to offer this, your Honor.

The Court: It may be admitted and marked.

(The check was thereupon received in evidence and marked U. S. Exhibit 166.)

Mr. Faulkner: These objections do not go to any dispute on our part that they paid the bills, your Honor.

Mr. Pratt: This is offered in connection with the first count of the indictment.

Cross Examination

Mr. Faulkner: Q. What is your position in relation to the South Atlantic Steamship Company? Are you an officer of that company?

A. No, sir.

Q. Have you got anything to do with their records? Do you keep the records for the South Atlantic Steamship Company in New York?

A. No. [2199]

Q. Do you deposit the moneys they receive from time to time? A. No.

Q. Do you make any entries in relation to the sources of money that they receive from time to time? A. No.

Q. When you have testified that you knew the Government deposited money to their account, how do you know that of your own knowledge, Mr. McLaren?

A. Because for the past—during the war years, from the inception of the war up to and including

(Testimony of R. A. McLaren.)

the present time, it is our usual practice to ask that we be put in funds by the South Atlantic Steamship Company, and they have told us many times that we need have no concern of the source of those funds because they came out of the United States Treasury.

Q. In other words, your testimony is based upon what someone told you, is that it?

A. That is correct.

Mr. Faulkner: I move that it go out, your Honor, that is, the source of moneys of the South Atlantic Steamship Company. He did not have a source of knowledge that permitted him to testify to it as a fact.

Mr. Pratt: May I ask one question of this witness?

Q. Mr. McLaren, your company, Williams Dimond Company, is a California corporation?

A. Yes, sir.

Q. It is connected with another corporation, is it not, as a subsidiary? A. That is correct.

Q. What is that corporation?

A. American Hawaiian Steamship Company.

Q. Williams Dimond Company operates not only in connection with the ships that are allocated to the American Hawaiian Steamship Company, but also you operate in the management of other ships that are controlled under the general agency contracts with other shipping companies, is that right? A. That is correct.

Q. And how many such companies or how many

(Testimony of R. A. McLaren.)

such ships are operated by Williams-Dimond & Co.?

A. That is very variable. Of the fourteen companies we represent there have been as many as four hundred and forty vessels.

Q. Then the amount of your activities in connection with the war years has been very great?

A. That is right.

Q. Now, in handling the financial affairs in connection with these war problems and the operation of these ships, have you been in constant contact with these various companies which you represent?

A. Decidedly so.

Q. Are you familiar with the uniform methods of financial operation so far as the sources of funds is concerned? A. I am.

Q. And are they all of the same character?

A. Definitely.

Mr. Faulkner: We object to that as incompetent, irrelevant and immaterial. In other words, your Honor, I do not think that I made myself clear to the Court the other day. [2201]

The Court: Pardon me.

Q. Did I understand you to say that you were vice-president and treasurer?

A. That is correct.

Mr. Faulkner: Of the Williams Dimond Company.

The Court: Of the Williams Dimond Company.

Mr. Faulkner: He has nothing to do with the South Atlantic Steamship Company. My point, your Honor, is this:

(Testimony of R. A. McLaren.)

The Court: Q. Is that a correct statement?

A. That is correct.

The Court: Q. Nothing to do financially with them?

A. As their agents. We naturally have to handle their business. They have no one here. They have to look to us.

Q. I mean, with relation to this Government fund, so-called Government fund?

A. We do not administer the Government fund.

The Court: Proceed.

Mr. Faulkner: In other words, my point is this, your Honor, in respect to this: I think the last answer covered this witness, but it will clarify this: in other words, these documents are in evidence and they create the legal relation of the parties. Your Honor has admitted them and we have merely stated a general objection that goes to certain fundamental things.

Mr. Pratt: May I interrupt and clarify this matter? If the Court please, of course the claim of the Government is [2202] that the defendants submitted a false claim to the Government, which is exemplified by the invoice. I do not think it makes a particle of difference, certainly in this instance, whether the funds with which they were paid came from the pocket of the Government or from the pocket of somebody else. The assertion that the Government makes is that there was a false claim. Therefore I withdraw the answer of the witness in

(Testimony of R. A. McLaren.)

regard to the source of these funds. I think that should dispose of it, should it not?

The Court: Let the Jury disregard the testimony with relation to these funds. I think that will clear the record.

Mr. Faulkner: Yes. That is the point I make, your Honor, in respect to all these witnesses who would testify to the source of the funds. We know there is a relation. The Jury knows it, and the Court, evidenced by a written contract. In other words, that relationship I do not think should be impaired, whatever it may be, by statements of people who do not with exactness know.

The Court: In any event he said——

Mr. Faulkner: His testimony is out in that respect.

Q. Now, Mr. McLaren, there are a couple of exhibits here. I think you testified that these Exhibits 56 and 57 came out of the files of your company, is that right? A. That is correct.

Q. You did not place the order naturally?

A. No.

Q. You merely identify them as part of your file? A. That is [2203] right.

Mr. Faulkner: Is this the case where you did not have an inspection certificate?

Mr. Hippeli: There was none for that.

Mr. Faulkner: That is all, Mr. McLaren.

Mr. Pratt: That is all. Mr. Babcock.

At this time, if the Court please, the Government offers in evidence Exhibit No. 9 for Identification,

which is a certified copy of the general agency contract between the United States through the War Shipping Administration and the Hammond Shipping Company. Included in the exhibit is also a certified copy of a letter allocating the steamship William A. Coulter to the management of Hammond Shipping Company under the terms of the general agency contract.

Mr. Faulkner: The same general objection, your Honor.

The Court: The objection will be overruled. Let the witness be sworn.

(U. S. Exhibit 9 for Identification was thereupon received in evidence.)

PAUL BABCOCK,

called on behalf of the Government; sworn.

The Clerk: Q. Will you state your name?

A. My name is Paul Babcock. [2204]

Direct Examination

Mr. Pratt: Q. Mr. Babcock, you are employed by the Hammond Shipping Company, are you not?

A. That is correct.

Q. Here in San Francisco. In what capacity?

A. I am purchasing agent and port steward.

Q. Purchasing agent and port steward for that Company, and you have occupied that position for some time?

A. Yes, since the latter part of 1942.

(Testimony of Paul Babcock.)

Q. I direct your attention to a paper, a purchase order, United States Government, War Shipping Administration, Hammond Shipping Company, Limited, General Agent, contractor to Nye & Nissen, Attention Mr. Berman, dated April 24, 1944, for the purchase of certain butter, cheese and eggs for delivery to the steamship William A. Coulter, Voyage 4. Do you identify that document?

A. Yes, that is ours.

Q. That is a purchase order issued by you personally, was it not?

A. That is correct. That is a copy, the second copy.

Q. That is the second copy. The original was sent to Nye & Nissen, I take it?

A. That is correct.

Q. And this is your signature at the bottom designating you as purchasing agent, right?

A. That is correct. That is my signature.

Mr. Pratt: This is offered in evidence, if the Court please, in connection with the first count of the indictment.

Mr. Faulkner: The general objection only, your Honor.

The Court: Let it be admitted and marked.

(The document was thereupon received in evidence and marked U. S. Exhibit 167.)

Mr. Pratt: Q. I now hand you another purchase order dated May 1, 1944, directed to Nye & Nissen, attention of Mr. Berman, for the purchase of 5 cases, medium fresh eggs, for delivery to the

(Testimony of Paul Babcock.)

steamship William A. Coulter, Voyage 4, Pier 44. Do you identify that as coming from the records of your company and being a copy of the original purchase order issued by you as purchasing agent of that company?

A. That is correct. That is my signature.

Q. And your signature appears on the paper, does it not? A. That is correct.

Mr. Pratt: This is offered in evidence, if the Court please.

Mr. Faulkner: The same general objection, your Honor.

The Court: Let it be admitted and marked.

Mr. Faulkner: Exception.

(The document was thereupon received in evidence and marked U. S. Exhibit 168.)

Mr. Pratt: Q. Now, on Exhibit 167, the first of these purchase orders, above your signature is the following: [2206] "I certify that the above specified articles have been received, quantity and quality correct, or that services have been rendered as stated." What examination did you make of the products described in the purchase order before you signed the certificate?

Mr. Faulkner: We object to that as hearsay as to the defendants, your Honor. That would not bind the defendants in this case.

Mr. Pratt: I am asking him what he did.

Mr. Faulkner: What he did? He introduces a document that has a certificate on it and he asks

(Testimony of Paul Babcock.)

him what he did with relation to it. That is hearsay as to us. It is the document that has gone in.

Mr. Pratt: Here is a certificate which he has signed personally in connection with a transaction involving the defendants and certainly he is entitled to say what he did in connection with the whole transaction, and that is what we are asking.

Mr. Faulkner: The Government wishes to show the certificate is either true or false, and in either event we are not bound. If he wants to prove the document has a false certificate on it——

The Court: In any event I will allow it.

Mr. Faulkner: Exception.

Mr. Pratt: Will you read the question. [2207]

(Question read.)

A. I will have to clarify that. This certificate——

Mr. Faulkner: Just a moment, your Honor. The question is what examination he made of the product.

The Witness: I made no examination of the product personally.

The Court: In any event, now it is time for an adjournment until two o'clock. The jurors may be excused.

(An adjournment was thereupon taken until two o'clock p.m.)

Afternoon Session, March 5, 1946, 2:00 p.m.

PAUL BABCOCK,

recalled;

Direct Examination (resumed)

The Court: Waive the roll call, stipulating and agreeing all the jurors are present. Proceed.

Mr. Pratt: Q. I direct your attention, Mr. Babcock, to the second of these purchase orders, and this contains at the bottom your signature below the certificate, identically with the one that was read on the first of the purchase orders, and I will ask whether these five cases of eggs were examined by you before you put your signature on the purchase order?

Mr. Faulkner: Same objection, your Honor, that it does not bind the defendant.

The Court: Overruled.

Mr. Faulkner: Exception.

A. No, I did not.

Mr. Pratt: Q. I direct your attention to another paper, an invoice dated May 8, 1944, invoice of Nye & Nissen to the Government, that includes 40 cases of eggs, Medium, Processed, AA, at 4 cents, an item of $492; was this invoice, or a copy of it, brought to your attention, or did you see it at the time of these transactions?

A. I don't understand your question—at the time of the transaction—at the time of the delivery?

Q. That's right.

A. I don't remember. These, I believe, were

(Testimony of Paul Babcock.)

[2208] mailed to the office. They might have been. I believe they were mailed in with the delivery slips attached.

Q. With the delivery slip. You don't remember whether the invoice was delivered at the ship at the time of the delivery of the food products?

A. I don't remember; it might have been. The clerk in that case——

Q. I direct your attention to the fact that these two purchase orders, the first includes 25 cases of eggs and the second one 5 cases, or a total of 30 cases. Now, I direct your attention that in this invoice Nye & Nissen charged the Government with 40 cases of eggs——

Mr. Faulkner: I object to that as calling for an opinion and conclusion of the witness. In other words, Mr. Pratt delights to use the phrase "charged the Government." That is a question of law that is involved here, and it is not a proper part of the question. I don't have any objection to him calling attention to the cases of eggs here.

Mr. Pratt: I did not suppose there was any question as to the purport and effect of this invoice, but in order to satisfy counsel I will change the question.

Mr. Faulkner: That you very much.

The Court: After all, you are assuming a fact not in evidence up to this time.

Mr. Pratt: This paper is not in evidence, that's true.

The Court: Well, develop what is disclosed.

(Testimony of Paul Babcock.)

Mr. Pratt: Q. Directing your attention to this invoice, and to the fact that 40 cases of eggs are mentioned in the invoice and that the two purchase orders aggregate only 30 cases of eggs, are you able to state why there is that difference between the purchase orders and the invoices?

A. Yes. I no doubt called in by phone and increased the order from the original 25, increasing it up to 15 cases to 40.

Q. Were you on that ship, Mr. Babcock, at the time, or about the time that these products were delivered to the boat?

A. I was. I was down there on all ships at the time of delivery and assisted in stowing the ships.

Q. Particularly, do you have any recollection of having been there on this particular occasion?

A. I have no particular—anything particular that has come out in my mind that would make me believe that I had not been there but I couldn't say.

Q. Are you acquainted with Mr. Dallas Johnson, the FBI agent who is sitting here at the table?

A. Yes, I am.

Q. I will ask you whether you saw him about the time of the delivery of these products.

A. Yes, I did.

Q. Whereabouts?

A. He was down opposite the storeroom.

Q. Your mean on the boat?

A. The ship, yes.

(Testimony of Paul Babcock.)

Q. On the ship. Who was with him, do you recall that?

A. There were two Army officers, I believe, who were connected with the Food Inspection Service.

Q. Have you seen them since?

A. Not to my knowledge, I don't [2210] remember.

Q. Have you seen them to be able to identify them since that time? A. No, I haven't.

Q. When you saw Mr. Johnson down there on the boat with these two Army officers, what were they doing?

A. Well, they were checking over cases of eggs at the time I was down there.

Q. What were they doing in that connection, if you know?

A. Well, they seemed to be opening up cases of eggs and I wasn't around long enough to really go into the details. I talked to Mr. Johnson and saw him and I knew it was all right. I satisfied my curiosity.

Q. Can you tell us the date when that occurred?

A. I cannot, sir.

Mr. Pratt: Cross-examine.

Mr. Faulkner: Is this in evidence?

Mr. Pratt: No, it is not.

Cross Examination

Mr. Faulkner: Q. Mr. Babcock, as I understand it, you were the purchasing agent for the Hammond Shipping Company in May, 1944?

A. That is correct.

(Testimony of Paul Babcock.)

Q. Are you purchasing agent now?

A. I am.

Q. During the month of May up to that time an order was sent to the firm of Nye & Nissen in relation to certain butter, eggs, and cheese; is that right, according to your records?

A. That is correct, sir. [2211]

Q. Do you know, Mr. Babcock, whether this original order was first telephoned in to the company before a purchase order was issued?

A. Those orders were not confirmed. They were mailed in direct without any previous knowledge of Nye & Nissen.

Q. How do you know that?

A. Well, when I look at the purchase orders, they don't say "confirmation" on them, they have "Will advise" at the top.

Q. I notice that in these instances on these purchase orders that the delivery time is noted, "To be advised," in relation to the 5 cases of the order dated May 1st, and that the order in relation to 25 cases of Medium fresh eggs stated, "Delivery time, about April 28th," then in brackets, "Will advise."

A. In other words, that is a tentative order.

Q. You say the ship was not loaded on the 28th of April, was it? A. You mean with stores?

Q. Yes.

A. I don't remember the date, sir.

Q. Have you any idea whether it was April or May?

A. Well, it would be within a very few days of

(Testimony of Paul Babcock.)

the "Will advise." We usually know within a day or two of the exact time.

Q. This is the fourth voyage of that ship, is that correct? A. That is correct.

Q. You were fitting here out for a voyage?

A. For Voyage 4, yes.

Q. What type of ship was she?

A. An EC-2, Liberty Ship. [2212]

Q. A what? A. A Liberty ship.

Q. Sometime in the month of May or thereabouts you saw a man named Johnson, who sits in court here at this table, you recognize him?

A. I do, yes.

Q. Do you recall the time you saw him?

A. The exact day I do not, sir.

Q. Do you know how many days it would be from the time the eggs were delivered on board the ship?

A. The eggs were being loaded aboard the ship?

Q. At the time you saw Mr. Johnson?

A. That is correct.

Q. Now, did you continue loading the eggs on board the ship?

A. I would like to correct that statement, sir. The eggs had been loaded.

Q. Onto the ship?

A. In that ship, yes.

Q. Were you then ——

A. They were completed, they had been loaded into the vessel.

(Testimony of Paul Babcock.)

Q. Do you know whether all of these eggs came down at the same time? A. On both orders?

Q. Yes.

A. I do not believe they did. The time on the purchase order would almost show that, whether there is a lapse of time I would have to look at the purchases.

Q. Would that help you, Mr. Babcock?

A. Thank you.

Q. Can you tell me?

A. I could tell better, I believe, by looking at the invoice, or if there are delivery slips.

Mr. Faulkner: Have you any objection? [221]

Mr. Pratt: Not at all.

The Witness: I am sorry, I still can't tell for sure whether they were all delivered on the same date.

Mr. Faulkner: Q. In the lower right-hand corner on each of these purchase orders there is a certificate that your attention was directed to by Mr. Pratt. At the time the original purchase order was sent to the firm of Nye & Nissen that certificate was not signed at that time, was it?

A. This certificate?

Q. Yes. A. This is called a certificate.

Q. Yes, the certificate.

A. No; it is not the practice to sign the pink copy at the time of making out the original purchase.

Q. In other words, it was sometime after the

(Testimony of Paul Babcock.)

delivery of the invoice that you signed that certificate?

A. I signed the purchase order at the time of passing bills, which is after delivery of the goods.

Q. I am talking about when did you sign the certificate.

A. This copy of the purchase order I signed after the copy of the—after the invoice had been—when we put the bills through for payment.

Q. At the time you signed that purchase order and certified to the condition of the goods there isn't any question, is there, that officers of the United States Government had inspected all of that merchandise, had they not?

A. I don't know whether at this time the food inspection was being made, or not. [2214] That didn't come in until, I don't remember just the exact date when FDA inspection of foods and eggs and so forth were mandatory.

Q. Did you receive a certificate—I mean you acquired a certificate in 1944 from the Department of Agriculture, did you not?

A. I believe that is correct; I believe that is correct.

Mr. Faulkner: Have you the William Coulter certificate there, please? Is this a document from your files, Mr. Babcock? A. Yes, sir, it is.

Mr. Faulkner: I ask that that be marked for identification, your Honor, defendants' next in order.

(Testimony of Paul Babcock.)

(The document was marked Defendants' Exhibit AX for Identification.)

Mr. Faulkner: Q. Regardless of the time that you received that certificate which is marked for identification Defendants' Exhibit AX which I just showed you, regardless of the time of the receipt of that certificate, there isn't any question that on the delivery of this merchandise and shortly after the goods had been placed aboard the ship that Mr. Johnson and two Army inspectors came down and inspected the merchandise; isn't that correct?

A. I believe that is correct.

Q. So that in relation to the shipment of this merchandise from the firm of Nye & Nissen before you signed that certificate the goods had been received by your company on the pier, [2215] loaded into the ship, and officers of the Government had come down and had examined the merchandise, is that right? And it was subsequent to that examination——

The Court: There has been no answer.

The Witness: A. Yes.

Mr. Faulkner: It was subsequent to their examination when you signed a certificate that the goods were received. In other words, it was subsequent to that occurrence in which Mr. Johnson participated that you signed a certificate, "I certify that the above specified articles have been received, quantity and quality correct, or that services have been rendered as stated." That is correct, is it not? A. Yes, that is correct.

(Testimony of Paul Babcock.)

Q. In addition to that, it is true, is it not, that the records of your company disclose that an officer of the ship signed a certificate, "I certify that the services above specified have been performed or the articles in quantity and quality above specified have been delivered to the vessel in good condition." That was signed by the mate of the William Coulter, was it not?

A. The master.

Q. It says "Mate" on it, does it not?

A. Well, his writing is not what it should be. He was the master, yes.

Q. At all events, that man's signature is known to you and that is part of your records?

A. That is correct.

Q. Is that correct? A. Yes. [2216]

Q. Did you receive any instructions from Mr. Johnson or any of the men with him with respect to paying any invoice that you received from the firm of Nye & Nissen in respect to the merchandise that was inspected on that ship on that day?

A. Did I receive any instruction not to pay?

Q. Not to pay the invoice. A. I did not.

Q. Did you receive any instruction not to accept the merchandise? A. No.

Q. Did they advise you in any way that the merchandise after their inspection did not correspond to the description of it in the invoice? A. No.

Q. The merchandise went to sea, is that correct?

A. That is correct.

Q. And was consumed by the William Coulter?

A. Yes.

(Testimony of Paul Babcock.)

Q. Later, the bills for the merchandise were paid? A. Yes.

Q. What did these inspectors do in respect to the butter, do you know?

A. I don't know. I don't know exactly what they did, sir, down there. I was not connected with it. I came down to only talk to Mr. Johnson.

Q. Who is this man, he has his handwriting here?

A. That is F. O. Hoyle, he is auditor for the United States Maritime Commission.

Q. He audited that bill?

A. He audited that bill.

Q. What does it say? What does it say on that stamp?

A. "This invoice has been audited and is approved for the amount [2217] of $754.66."

Q. There is no time when that was done?

A. I don't believe he dates it, no. It is sometime later.

Mr. Faulkner: Will your Honor indulge me a moment? That is all.

Mr. Pratt: That is all. Call Mr. Peterson.

C. V. PETERSON,

called as a witness for the Government; sworn.

The Clerk: Will you state your name?

A. C. V. Peterson.

Direct Examination

Mr. Pratt: Q. Mr. Peterson, I believe you are an officer of the Hammond Shipping Company, are you not? A. Yes.

Q. Your place of business is here in San Francisco? A. Yes.

Q. In 1944, in May, did you occupy the same position you do now?

A. In 1944 I was auditor and assistant treasurer. Now I am——

Q. Now what are you?

A. Comptroller and assistant treasurer.

Q. Now, you are comptroller and assistant treasurer. In connection with your official duties with the Hammond Shipping Company, do you have something to do in connection with the outfitting, supplying of ships that are allocated for management to the Hammond Shipping Company under Government general agency contracts?

A. Yes, as far as issuing or paying funds out.

Q. Your job is to pay the bill, is that it? I direct your attention to an invoice of Nye & Nissen directed to the United [2218] States of America, War Shipping Administration, Hammond Shipping Company, General Agents, dated May 8, 1944, an invoice for certain products, including butter.

(Testimony of C. V. Peterson.)

cheese and eggs, in the sum of $754.66, in relation to these supplies furnished to the steamship William Coulter at pier 44. I will ask if you can identify this paper as having come from the original records of your corporation.

A. This came from the original records of the War Shipping Administration, we as agents for it.

Q. This is part of the regular records of your company as general agents for the War Shipping Administration?

A. We retained a copy of that.

Q. This is the original invoice, is it not?

A. It appears to be such, yes.

Q. I now hand you another paper, a canceled check of the Hammond Shipping Company, General Agents, Special Account, Payable to Nye & Nissen for the sum of $754.66, with the perforation showing cancelation, and the endorsement of Nye & Nissen on the back. I will ask you if that is a check that comes from the regular records of your company, a check which was issued by your company as general agents, in payment of this invoice which you have already identified?

A. Yes.

Q. That is true, is it not? A. Yes, sir.

Mr. Pratt: These papers are offered in evidence, the invoice and the canceled check.

Mr. Faulkner: The general objection, your Honor. [2219]

The Court: Overruled. They will be admitted and marked.

(Testimony of C. V. Peterson.)

Mr. Faulkner: Exception.

(Invoice marked U. S. Exhibit 169 in evidence, and the check U. S. Exhibit 170 in evidence.)

Mr. Faulkner: That is offered on count 1, is it? Count 1?

Mr. Pratt: Yes.

Q. Can you tell by examining this check or otherwise from what fund that check was paid?

Mr. Faulkner: I object to that as calling for an opinion and conclusion of the witness and not the best evidence.

The Court: If he knows he may answer.

Mr. Faulkner: Exception.

The Witness: A. These moneys came out of a special account jointly with the War Shipping Administration and the Hammond Shipping Company.

Mr. Pratt: Q. Whose money was it?

A. War Shipping Administration——

Mr. Faulkner: Same objection.

Mr. Pratt: War Shipping Administration.

Q. Did your company have a revolving fund supplied by the Government for the payment of moneys relating to the equipment, servicing and supplying of ships that are allocated to your company under your general agency contract?

A. Yes.

Q. Do you know what the amount of that revolving fund is? [2220] A. $500,000.

Q. Was it that amount in May of 1944?

(Testimony of C. V. Peterson.)

A. I don't recall it was the exact amount.

Q. That revolving fund is kept up to a certain point by renewed receipts from the Government?

A. Yes.

Q. Do your know anything about the maintenance of that fund, yourself, in your official capacity, Mr. Peterson? A. Yes.

Q. Will you state how that is handled, and speaking from your own knowledge?

Mr. Faulkner: Same objection, your Honor.

The Court: Overruled.

Mr. Faulkner: Exception.

A. The fund, as I recall it, originally was set up through the instructions of the War Shipping Administration. We, as agent, utilized this fund to pay disbursements for the account of the War Shipping Administration as general agents. Periodically we support all disbursements with all original receipts and original invoices and receipts in the manner that WSA required us to do for its reimbursement.

Mr. Pratt: Q. During the period of time that you have been utilizing such a fund has that fund ever got to a point where it was overdrawn or exhausted?

A. I believe in 1942, or early 1942, when the funds were first set up when the workings of the War Shipping Administration and the General Agents were, you might say, not co-ordinated perfectly that is true, [2221] but not during 1944.

(Testimony of C. V. Peterson.)

Q. During the year 1944 was there always a balance in that fund?

A. To my knowledge, yes.

Q. It was never exhausted during that time?

A. To my knowledge.

Q. So that whatever moneys were checked out were checked out of Government funds, is that right?

Mr. Faulkner: Your Honor, that calls for a conclusion.

The Witness: Out of that fund, yes.

Mr. Faulkner: That calls for his conclusion. It is his opinion in indicating whether they were Government funds.

The Court: He is indicating his own experience, what he did, and what he knew of his own knowledge.

Mr. Faulkner: But he testifies moneys were in that account——.

The Court: This is a special fund, isn't it?

The Witness: Yes.

The Court: What is this special fund that we are talking about? Just tell the jury.

A. Well, that is the fund set up which we are jointly responsible with the War Shipping Administration, which we cannot draw checks on to ourselves as a corporation would, and every check being made signed by the War Shipping Administration. Every dollar of that fund has to be accounted for and that is spent for Government purposes.